Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

Montgomery Blair Sibley,

Petitioner,

vs.

Honorable Nathaniel M. Gorton,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the First Circuit

Petition for Writ of Certiorari

Montgomery Blair Sibley
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Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

Respondent United States District Court Judge Nathaniel M. Gorton has now held that – and the First Circuit Court of Appeals has refused to review – enforcement of United States District Court of Massachusetts, Local Rule 83.53(b) – "Practice by Persons Not Members of the Bar" – does not violate United States Constitutional guarantees. That Rule denies *pro hac vice* appearances to counsel who (i) have "disciplinary proceedings pending against" and (ii) requires the motion for admission *pro hac vice* be made by "a member of the bar of this court, who shall also file an appearance".

Accordingly, presented for review are four questions:

WHETHER, Local Rule 83.53(b) violates Public Policy;

WHETHER, Local Rule 83.53(b) violates the Rules Enabling Act, 28 U.S.C. §2072(b) trespassing as it does upon both the Privileges and Immunities Clause and the First Amendment;

WHETHER, Local Rule 83.53(b) which prospectively bars Petitioner from appearing in the U.S. District Court for the District of Massachusetts violates Due Process;

WHETHER, Local Rule 83.53(b) which requires local counsel violates the Sherman Act.

A List of All Parties to the Proceeding Not Contained in the Caption

Plaintiff in the District Court:

Massachusetts Medical Society, publisher of the New England Journal of Medicine.

Defendant in the District Court:

Flu Fighter Corp. There are no parent or publicly held company owning 10% or more of Flu Fighter Corp.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner, Montgomery Blair Sibley, prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered on February 14, 2006.

Review is mandated as the First Circuit has (i) decided an important question of federal law that has not been, but should be, settled by this Court, and (ii) has decided an important federal question in a way that conflicts with relevant decisions of this Court.

OPINIONS BELOW

The January 11, 2006, order denying Flu Fighter Corp.'s motion to enlarge time to respond to the Complaint in Case No.: 05-CA-12522 pending before Respondent Judge Gorton is reprinted in the appendix hereto, *Appendix-2.*

The January 11, 2006, order denying Petitioner's motion to practice *pro hac vice* in Case No.: 05-CA-12522 pending before Respondent Judge Gorton is reprinted in the appendix hereto, *Appendix-3.*

The February 14, 2006, judgment of the First Circuit Court of Appeals denying Petitioner's petition for prohibition is reprinted in the appendix hereto, *Appendix-4.*

JURISDICTION

The jurisdiction of this Court is invoked under Article III and the Ninth Amendment to the United States Constitution and 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

U.S. CONSTITUTION ARTICLE III, § 2

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;-- between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

U.S. CONSTITUTION ARTICLE IV, § 2

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be

delivered up, to be removed to the state having jurisdiction of the crime. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

U.S. CONSTITUTION, FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances

U.S. CONSTITUTION, FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONSTITUTION, NINTH AMENDMENT

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

SHERMAN ACT, 15 U.S.C. §1

Trusts, etc., in restraint of trade illegal; penalty. Every contract, combination in the form of trust or otherwise, or conspiracy, in

restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

RULES ENABLING ACT, 28 U.S.C. §2072(B)

Such rules shall not abridge, enlarge or modify any substantive right.

UNITED STATES DISTRICT COURT OF MASSACHUSETTS, LOCAL RULE 83.53(B)

Practice by Persons Not Members of the Bar - (b) Other Attorneys. An attorney who is a member of the bar of any United States District Court or the bar of the highest court of any state may appear and practice in this court in a particular case by leave granted in the discretion of the court, provided he files a certificate that (1) he is a member of the bar in good standing in every jurisdiction where he has been admitted to practice; (2) there are no disciplinary proceedings pending against him as a member of the bar in any jurisdiction; and (3) he is familiar with the Local Rules of the United States District Court for the District of Massachusetts; and provided further, his application for leave to practice in this court is on motion of a member of the bar of this court, who shall also file an appearance. An attorney seeking admission under this subsection may not enter an appearance or sign any papers until his application has been granted, except that the attorney may sign a complaint or any paper necessary to prevent entry of default for failure to answer or otherwise plead, provided such complaint or other paper is accompanied by his application for admission in proper form.

STATEMENT OF THE CASE

On December 15, 2005, the Massachusetts Medical Society filed a civil suit against Flu Fighter Corp. in the U.S. District Court for the District of Massachusetts. That matter was assigned Case Number: 05-CA-12522-NMG and assigned to Respondent here, the Honorable Nathaniel M. Gorton.

On December 30, 2005, Petitioner was first given notice of this suit when he received by FedEx the summons and complaint from Flu Fighter Corp. whom Petitioner was representing on other matters in Florida. On January 4, 2006, Petitioner filed a motion to enlarge time for Flu Fighter Corp. to respond to the Complaint. Respondent denied that motion on January 11, 2006. *Appendix-2.*

On January 11, 2006, Petitioner filed a motion to practice *pro hac vice* seeking admission to appear in Case Number: 05-CA-12522-NMG. Specifically, that motion challenged the requirements of Local Rule 83.5.3 – "Practice by Persons Not Members of the Bar" that (i) "there are no disciplinary proceedings pending against him as a member of the bar in any jurisdiction" and (ii) "his application for leave to practice in this court is on motion of a member of the bar of this court, who shall also file an appearance." In that motion, Petitioner noted:

> I presently am a member in good standing of the State Bars of New York and Florida and the District of Columbia Bar. Moreover I have been admitted to practice in the United States District Courts of the Western, Southern and Eastern Districts of New York, the Middle and Southern Districts of Florida, the Second and Eleventh Circuits of the United States Court of Appeals and the United States Supreme Court. At present, there are two complaints against with the Florida Bar for failing to pay child

> support and being too litigious during my divorce which complaints date back to 2002. The Florida Bar has yet to adjudicate those complaints and to date there has been no formal charge filed against me. As such, if the term "disciplinary proceedings pending against him" applies to me in this situation, I have been denied a substantial right – to practice law before this court – solely upon allegations which have not been proved and to which I have yet had the opportunity to fully respond.

The same day, Respondent denied that motion stating "Motion denied without prejudice to the filing by the applicant of an application in full compliance with all of the requirements of the Local Rule 83.53(b)." *Appendix* -3.

On January 25, 2006, Petitioner filed a "Petition for Writ of Prohibition" with the First Circuit Court of Appeals. The jurisdiction in the First Circuit Court of Appeal was specifically invoked pursuant to this Court's holding in *Frazier v. Heebe*, 482 U.S. 641 (1987). On February 14, 2006, the First Circuit entered is judgment denying the petition simply stating that petitioner "has not shown that he has satisfied the requirements for a writ of prohibition . . ." *Appendix-4.*

This timely Petition followed.

REASONS FOR GRANTING THE WRIT

As a matter of public policy, this Court should review the nation-wide practice in Federal District Courts of requiring the appearance of local counsel in order for a litigant to respond to a lawsuit as such a requirement is a significant impediment to both earning a living as an attorney and providing legal services to clients who cannot afford duplicate counsel.

Second, Local Rule 83.53(b) violates the Rules Enabling Act, 28 U.S.C. §2072(b), trespassing as it does upon both the Privileges and Immunities Clause and the First Amendment.

Third, Local Rule 83.53(b) which prospectively bars Petitioner from appearing in the U.S. District Court for the District of Massachusetts solely upon an unproven allegation of a violation of ethical rules violates Due Process.

Last, Local Rule 83.53(b) which requires local counsel violates the Sherman Act as it is an unauthorized restraint of trade.

I. LOCAL RULE 83.53(B) VIOLATES PUBLIC POLICY

Raising a fence around the U.S. District Courts and only permitting the cattle inside the fence to feed, upsets the rest of the herd and denies to those who will be feeding on that cattle the benefits of competition and original thinking.

As noted by the American Bar Association in its Model Code of Professional Responsibility (1983), Ethical Consideration 3-9:

> . . . In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the

> services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice.

Moreover, as stated by Mr. Justice Stevens in his dissent *Leis v. Flynt*, 439 U.S. 438, 451 (1979): "This case involves a pro hac vice application by qualified legal specialists; no legitimate reason for denying their request is suggested by the record. They had been retained to defend an unpopular litigant in a trial that might be affected by local prejudices and attitudes. It is the classic situation in which the interests of justice would be served by allowing the defendant to be represented by counsel of his choice. The interest these lawyers seek to vindicate is not merely the pecuniary goal that motivates every individual's attempt to pursue his calling. It is the profession's interest in discharging its responsibility for the fair administration of justice in our adversary system."

As such, it would be against Public Policy to permit such a barrier to practice as erected by Local Rule 83.53(b).

II. LOCAL RULE 83.53(B) VIOLATES THE RULES ENABLING ACT

Clearly, no Article III branch of the government may enact a rule of procedure that in practice "abridge[s], enlarge[s] or modif[ies] any substantive right." 28 U.S.C. §2072(b).

Here, in two distinct areas, Local Rule 83.53(b) abridges Petitioner's substantive rights.

A. REQUIRING LOCAL COUNSEL VIOLATES THE PRIVILEGES AND IMMUNITIES CLAUSE

Plainly, "a district court has discretion to adopt local rules that are necessary to carry out the conduct of its business . . . A district court's discretion in promulgating local rules is not,

however, without limits. This Court may exercise its inherent supervisory power to ensure that these local rules are consistent with 'the principles of right and justice.'" *Frazier v. Heebe*, 482 U.S. 641, 645 (1987).

In an analogous situation to that here, this Court has held that: "Indeed, there is no reason to believe that nonresident attorneys who have passed the Louisiana bar examination are less competent than resident attorneys. The competence of the former group in local and federal law has been tested and demonstrated to the same extent as that of Louisiana lawyers, and its members are equally qualified. We are unwilling to assume that "a nonresident lawyer—any more than a resident—would disserve his clients by failing to familiarize himself [or herself] with the [local] rules." *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 285 (1985).

Moreover, anticipating the argument that local counsel is necessary, in *Piper*, this Court went on to note that "The nonresident lawyer's professional duty and interest in his reputation should provide the same incentive to maintain high ethical standards as they do for resident lawyers. A lawyer will be concerned with his reputation in any community where he practices, regardless of where he may live. Furthermore, a nonresident lawyer may be disciplined for unethical conduct." *Id.* at 286.

Additionally, the practical reason for having local counsel – to have access to the court's file – is no longer valid given the near universal availability of the Public Access to Court Electronic Records (PACER) in the federal courts. Indeed, as the Court Management/Electronic Case Filing (CM/ECF) system is now practically available in all federal district courts, local counsel in no longer needed to handle that task.

Finally, the sole ground for the requirement of local counsel acknowledged by this Court in *Piper* – the need for counsel for

emergency hearings – in 1985 are hardly valid today. "The trial court, by rule or as an exercise of discretion, may require any lawyer who resides at a great distance to retain a local attorney who will be available for unscheduled meetings and hearings." *Id.* at 286.

Given the instant availability of telephones and internet communications unknown in 1985, that reason simply cannot stand considered analysis today. Indeed, it is a rare instance when a federal Court holds a hearing on less than 24 hours notice – more than enough time for Petitioner to travel from Washington D.C. to Boston if needed in person by the District Court.

As there is no "substantial reason" for requiring local counsel under Local Rule 83.5.3, that Rule's discrimination against *pro hac vice* applicants demonstrates that the discrimination practiced does not bears a close relationship to its proffered objectives. As such, Local Rule 83.5.3 violates the Privileges and Immunities Clause of Art. IV, § 2, of the United States Constitution – and as such the Rules Enabling Act – mandating this Court's full review of this matter.

B. Requiring Local Counsel Violates the First Amendment

The "right to hire and consult an attorney is protected by the First Amendment's guarantee of freedom of speech, association and petition." *Denius v. Dunlap*, 209 F.3d 944, 953 (7th Cir. 2000); *see also: United Mine Workers of Am. v. Ill. State Bar Ass'n*, 389 U.S. 217, 221-22 (1967) (holding that a union had a First Amendment right to employ a salaried attorney to represent members pursuing workers' compensation claims); *DeLoach v. Bevers*, 922 F.2d 618, 620 (10th Cir. 1990)("The right to retain and consult an attorney ... implicates ... clearly established First Amendment rights of association and free speech.").

Here, by compelling Flu Fighter, Corp., to choose counsel who are members of the U.S. District Court for the District of Massachusetts implicates the First Amendment right to choose counsel by limiting the pool of attorneys from which to choose. Moreover, a hidden tax is imposed upon the cost of litigation given the multiple courts in which Flu Fighter, Corp. must appear and the resultant complexity of explaining the factual and legal issues sufficiently for local counsel to discharge their obligations under Rule 11. The result: prohibitively expensive for a litigant who is dragged into multiple districts on complex litigation issues with a concurrent complex fact pattern to secure local counsel in each district.

Moreover, as recognized by Justice Powell in the majority opinion in *Piper*:

> Out-of-state lawyers may—and often do represent persons who raise unpopular federal claims. In some cases, representation by nonresident counsel may be the only means available for the vindication of federal rights. See *Leis v. Flynt*, 439 U.S., at 450, 99 S.Ct., at 704 (Stevens, J., dissenting). The lawyer who champions unpopular causes surely is as important to the "maintenance or well-being of the Union," *Baldwin*, 436 U.S., at 388, 98 S.Ct., at 1863, as was the shrimp fisherman in *Toomer*, or the pipeline worker in *Hicklin*.

Id. at 281.

As such, Local Rule 83.5.3 cannot withstand First Amendment analysis and this Court is compelled to review.

III. LOCAL RULE 83.53(B) VIOLATES DUE PROCESS

"Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. *Ex parte Garland*, 4 Wall. 333, 380, 18 L.Ed. 366; *Spevack v. Klein*, 385 U.S. 511, 515. He is accordingly entitled to procedural due process, which includes fair notice of the charge." *In re Ruffalo*, 390 U.S. 544, 550 (1968).

Here, by prospectively barring Petitioner – a member in good standing before three state courts and several federal courts – from practice before the U.S. District Court for the District of Massachusetts as there are unproved and unheard allegations pending with the Florida Bar, is a violation of Petitioner's due process rights to a hearing. Indeed, the U.S. District Court for the District of Massachusetts is indulging in punishment prior to proof of wrong doing by Petitioner.

Last, by denying the privilege to practice before them to those who have merely been accused rather than convicted of ethical breaches denies substantive and procedural due process to those so situated. This potential for national mischief and retaliation is too tempting to be left within the grasp of state government officials. Here, for example, the State of Florida has kept these allegations pending against Petitioner for four years thus inflicting significant punishment without affording notice and an opportunity to be heard in Florida. The United States District Courts should not be complicit in such retaliatory behavior.

Accordingly, Local Rule 83.5.3's requirement that "there are no disciplinary proceedings pending" must be found to be violative of due process rights which compels this Court to review this matter.

IV. REQUIRING LOCAL COUNSEL VIOLATES THE SHERMAN ACT

Section 1 of the Sherman Act, 15 U.S.C. § 1 makes unlawful "every contract, combination * * * or conspiracy, in restraint of trade or commerce among the several States".

Here, Anti-Trust issues are implicated when Petitioner's ability to practice law in the District Court of Massachusetts is restricted under Local Rule 83.5.3.

From the lawyer's standpoint, he or she will be at a significant disadvantage in attracting clients. Clients would have to be willing to provide compensation for the necessary association with a local lawyer who will duplicate the principal lawyer's efforts. The effect of such a rule is to drive up the cost of litigation and to steer business almost exclusively to the in-state federal bar. A client may have a number of excellent reasons to select a non-local lawyer: his or her regular lawyer most familiar with the legal issues may be non-local; a nonresident lawyer may practice a specialty not available locally; or a client may be involved in an unpopular cause with which local lawyers are reluctant to be associated. See *Piper*, 470 U.S. at 281.

The net result of Local Rule 83.53(b) is to restrain the lawyer's trade and as such it violates the Sherman Act. As such this Court must review this matter.

CONCLUSION

This Court must review the decision of the United States Court of Appeals for the First Circuit in this significant issue of the *de facto* denial of access to justice by escalating costs, and restricting advocacy to those inside the corral which serves only to insures compliant local counsel a steady source of fees and improperly inhibits the free flow of ideas from outside the corral.

To fail to review this matter is an abdication of this Court's appellate jurisdiction *granted* under Article III to which Congress may make "SUCH EXCEPTIONS, AND UNDER SUCH REGULATIONS" but such "EXCEPTIONS" and "REGULATIONS" cannot serve to eliminate that "appellate" jurisdiction by making this Court's obligation to determine matters brought before it DISCRETIONARY.

The complicity of Congress in approving United States Supreme Court Rule 10 in this treason of making appellate review discretionary with the Judiciary was not included among the limited powers granted to the government by the People. For by allowing review in this Court to be discretionary, an unholy ability is vested in the government: Only the government can decided what issues will be decided. Coupled with the Circuit Courts expansion of the "do not publish" rules exempting themselves from the strictures of *stare decisis*, the appellate courthouse doors are *de facto* closed to anyone the government prefers not to hear from.

The Ninth Amendment prohibits such a result by action of a combination of departments to deny adjudication as continuously since the Barons at Runnymede determined to end King John's manipulation of the courts for his own purposes in 1215, they compelled King John to vow in Chapter 40 of the *Magna Carta*: "To no one will we sell, to no one will we refuse or delay, right or justice."

The re-issued *Magna Carta* in 1225 combined this provision with the seminal due process guarantee of Chapter 39 into Chapter 29. In the words of Sir Edward Coke, Chapter 29 guaranteed that, "every subject of this realme, for injury done to him...by any other subject... without exception, may take his remedy by the course of the law, and have justice, and right for the injury done to him, freely without sale, fully without any deniall, and speedily without delay." Edward Coke, *The Second Part of the Institutes of the Laws of England* 55 (London, E.&R. Brooke 1797).

Indeed, as Chief Justice Marshall in *Cohens v. Virginia*, 19 U.S. 264, 6 Wheat. 264, 404 (1821) recognized:

> It is most true that [the United States Supreme Court] will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. **With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given**, than to usurp that which is not given. **The one or the other would be treason to the Constitution**. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgement, and conscientiously perform our duty. (Emphasis added).

Here, by deciding who shall be permitted to bring a case "before us", this Court commits the very "treason" that Justice Marshall warned of: the "judiciary cannot, as the legislature may, avoid a measure . ." by "declin[ing] the exercise of jurisdiction which is given." Article III gave that appellate jurisdiction and neither Congress nor this Court may avoid it by making it discretionary.

Respectfully submitted,

Montgomery Blair Sibley
Counsel for Petitioner

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OPINIONS BELOW

The January 11, 2006, order denying Flu Fighter Corp.'s motion to enlarge time to respond to the Complaint in Case No.: 05-CA-12522 pending before Judge Gorton
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The January 11, 2006, order denying Petitioner's motion to practice *pro hac vice* in Case No.: 05-CA-12522 pending before Judge Gorton
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The February 14, 2006, judgment of the First Circuit Court of Appeals denying Petitioner's petition
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
Case No.: 05-CA-12522-NMG

MASSACHUSETTS MEDICAL SOCIETY,

Plaintiff,

vs.

FLU FIGHTER CORP.,

Defendant.
_____/

Order on Defendant's Motion to Enlarge Time to Respond to the Complaint

Motion denied without prejudice to refiling by an attorney admitted to practice before this court.

/s/ Nathaniel M. Gorton
United States District Judge
January 11, 2006

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
Case No.: 05-CA-12522-NMG

MASSACHUSETTS MEDICAL SOCIETY,

Plaintiff,

vs.

FLU FIGHTER CORP.,

Defendant.
_____/

Order on Motion to Practice Pro Hac Vice of Montgomery Blair Sibley

Motion denied without prejudice to the filing by the applicant of an application in full compliance with all of the requirements of Local Rule 83.5.3(b).

/s/ Nathaniel M. Gorton
United States District Judge
January 11, 2006

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
No.: 06-1396

In Re: Montgomery B. Sibley
Petitioner

Before
Boudin, Chief Judge
Torruella, and Howard, Circuit Judges.

Judgment
Entered: February 14, 2006

Pursuant to Fed.R.App.P. 21, it is ordered that the petition for a writ of prohibition be denied, because petitioner has not shown that he has satisfied the requirements for a writ of prohibition, which parallel the requirements of a writ of mandamus. *See In re Atlantic Pipe Corp.*, 304 F.3d 135, 138 n.1 (1st Cir. 2002); *In re Justices of the Super. Ct. Dept. of Mass. Trial Ct.*, 218 F.3d 11, 15 n.3 (1st Cir. 2000); *United States v. Horn*, 29 F.3d 754, 769 n. 18 (1st Cir. 1994).

By the Court:

Richard Cushing Donovan, Clerk

By: Margaret Carter
Chief Deputy Clerk

cc: Montgomery B. Sibley